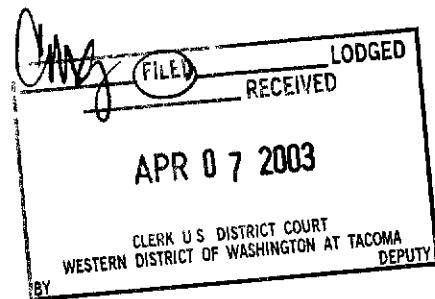


HONORABLE RONALD B LEIGHTON



7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 CORY THOMAS, et al , ) NO C01-5138 (RJB)RBL  
11 Plaintiffs, )  
12 vs ) PLAINTIFFS' TRIAL BRIEF  
13 CITY OF TACOMA, et al , ) REGARDING ADMISSIBILITY OF  
14 Defendants ) POLICE OFFICERS' MISCONDUCT  
15 ) TO SHOW BIAS

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16 Come Now the Plaintiffs and submit the following trial brief regarding the  
17 admissibility of police officers' misconduct to show bias

18 I Bias is a Permissible Basis for Impeachment

19 It is without question that a party may introduce evidence of a witness's bias in  
20 order to impeach the witness *United States v Abel*, 469 U.S. 50-51, 105 S Ct 465, 83  
21 L ed 2d 450 (1984), Joseph M McLaughlin, Weinstein's Federal Evidence, Vol 4,  
22 §607.04[1], pp 607-19 (2d ed 2002)

23  
24 Impeachment by showing the witness to be biased rests on two assumptions  
25 (1) that certain relationships and circumstances impair the impartiality of a  
26 witness, and (2) that a witness who is not impartial may, consciously or  
otherwise, shade his or her testimony in favor of or against a party Since  
bias of a witness is *always* significant in assessing credibility, the trier of  
fact *must* be sufficiently informed of the underlying relationships,



CV 01 05138 #00000621

GINAL

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circumstances, and influences operating on the witness to determine whether a modification of testimony reasonably could be expected as a probable human reaction

Courts are therefore liberal in accepting testimony relevant to a showing of bias. Bias is never classified as a collateral matter lying beyond the scope of inquiry, or as a matter on which an examiner is required to take a witness's answer.

<sup>10</sup> Weinstein's Federal Evidence, *supra*, at 607-19 – 607-21 (internal cites omitted)

## II The Tacoma Police Officers' Misconduct against Plaintiffs is Admissible to Show their Bias against Plaintiffs

It has long been held that evidence of police brutality is admissible, both on cross-examination and through extrinsic evidence, to show that the police officer's testimony is biased. See *Blair v. United States*, 401 F.2d 387 (D.C. Cir. 1968), see also *Commonwealth v. Hall*, 736 N.E.2d 425 (2000).

In *Blair*, two defendants, Blair and Suggs, who were convicted of robbery charges (among other things), appealed their convictions based on the trial court's exclusion of evidence of the arresting police officers' physical brutality against them.<sup>1</sup> *Blair* at 389. The court cited treatises and several other cases holding: "It is of course clear that the range of evidence that may be elicited for the purposes of establishing bias of a witness is quite broad and that accordingly evidence of police brutality is admissible for such purposes." *Blair* at 389. The court held that in the Suggs retrial, the trial court should admit the evidence of police brutality for establishing bias. *Id.* at 390. The court based its ruling on three facts: that Suggs was able to testify about specific facts of brutality, (2) that there was physical evidence of brutality, and (3) that the United States' primary

<sup>1</sup> Suggs also challenged the trial court's admitting Suggs' statements made while in police custody when the officers failed to give Suggs his *Miranda* warnings.

1                   witnesses were the police officers alleged of brutality *Id.* Since the primary witnesses for  
 2 the United States were police officers, their credibility was of extreme importance, so  
 3 evidence which may reveal bias should be admitted

4                   In *Commonwealth v. Hall, supra*, the appellate court of Massachusetts overturned a  
 5 drug trafficking conviction against the defendant because the trial court refused to admit  
 6 evidence of police brutality, which the defendant attempted to introduce to show police  
 7 bias. *Id.* at 427. The defendant attempted to introduce evidence that the arresting police  
 8 officers used excessive force after the defendant was handcuffed, but the trial court refused  
 9 to admit the evidence finding that it was a collateral matter. *Id.* The appellate court held  
 10 that such a refusal was reversible error because “[e]vidence of bias is almost never a  
 11 collateral matter”. *Id.* at 429. The court held that once the defendant made a “plausible  
 12 showing that the circumstances existed on which the alleged bias is based,” the evidence  
 13 should have been introduced. *Id.* The prosecution relied on police witnesses who testified  
 14 that the defendant threw the drugs from the car, that nobody other than the defendant left  
 15 the vehicle, and that the defendant resisted arrest when he was detained. *Id.* at 429. The  
 16 defendant’s witnesses testified that there was another person in the vehicle who fled the  
 17 vehicle, that that person must have thrown the drugs out of the vehicle, and that the  
 18 defendant exited the vehicle with his hands up, fully compliant. *Id.* at 429-30. As such,  
 19 the appellate court in *Hall*, as in *Blair*, found that the case “hinged on the credibility of the  
 20 witnesses”, so the evidence of the alleged police misconduct was extremely important  
 21  
 22

23                   Possible bias of police witnesses was an important question in this case.  
 24 All nine prosecution witnesses were members of the narcotics division of  
 25 the Springfield police department. If brutality had occurred, they would  
 26 have had a motive to cover up the beating to protect themselves or their  
 fellow officers

<sup>10</sup> Hall at 429, citing *Commonwealth v. Maffei*, 471 N.E.2d 1364 (1984).

In our case, in each incident, the police officers' account of the events is in stark contrast with the plaintiffs and their witnesses' account of events. Therefore, the credibility of the witnesses and parties are central to the case. Plaintiffs intend to introduce into evidence several incidents of police brutality and other police misconduct against plaintiffs, all of which the defendants have notice of.

These incidents reveal that the defendants and their fellow police officers' have a motive to lie in order to cover up their misconduct and that of their fellow officers. See *Blair, supra*, see *Hall, supra*. Plaintiffs' counsel should be able to cross-examine the officers regarding these incidents to show their bias. If the officer denies that the incident occurred, plaintiffs should then be allowed to admit extrinsic evidence of the officers' brutality and other misconduct.

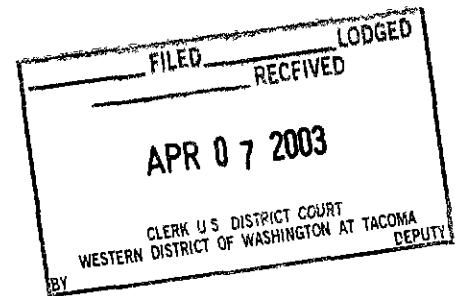
Dated this 7<sup>th</sup> day of April, 2003

Respectfully submitted,

Law Offices of Lemphard G Howell, P S

Lembhard G Howell, WSBA #133  
Attorney for Plaintiffs

HON RONALD B LEIGHTON



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CORY L THOMAS, ABDULLAH ALI,  
MUHAMMAD ALEXANDER, and ISMAIL  
RAHMAAN,

NO C01-5138RJB

Plaintiffs,

vs

DECLARATION OF SERVICE

CITY OF TACOMA, a municipal corporation,  
TACOMA POLICE DEPARTMENT, BRIAN  
EBERSOLE, JAMES O HAIRSTON, RAY  
CORPUZ, KRISTI BUCKLIN, et al ,

Defendants

Adrienne Zouad states and declares:

I am a citizen of the United States of America, over the age of 21 years, and competent to be a witness herein.

That on the 7<sup>th</sup> day of April, 2003 I deposited with ABC Legal Messengers copies of the following documents in the above-captioned case

ORIGINAL

1 Plaintiffs' Trial Brief Regarding Admissibility of Police Officers' Misconduct to  
Show Bias, and

## 5 This declaration

With instructions to deliver said documents on the same business day to

Shelley M Kerslake, Esq  
Tacoma City Attorney  
Civil Division  
747 Market Street, Room 1120  
Tacoma, WA 98402-3767

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct Executed at Seattle, Washington this 7<sup>th</sup> day of April,

2003

ADRIENNE ZOUAUG

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(206) 623-5296